

1 **MORTGAGE RECOVERY LAW GROUP, LLP**

2 PAUL A. LEVIN (State Bar No. 229077)

3 LAUREN M. GIBBS (State Bar No. 251569)

3 550 North Brand Boulevard, Suite 1100

4 Glendale, California 91203

4 Telephone: (818) 630-7900 Facsimile: (818) 630-7920

5 e-mail: plevin@themrlg.com, lgibbs@themrlg.com

6 **FEDERAL DEPOSIT INSURANCE CORPORATION**

7 DOUGLAS T. HOFFMAN (to seek admission pro hac vice)

8 3501 Fairfax Avenue, E-7006

9 Arlington, Virginia 22226

9 Telephone: (703) 516-5383

10 e-mail: dohoffman@fdic.gov

11 Attorneys for Plaintiff Federal Deposit

12 Insurance Corporation as Receiver

13 for Washington Mutual Bank

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **SOUTHERN DIVISION**

17 FEDERAL DEPOSIT INSURANCE
18 CORPORATION AS RECEIVER FOR
19 WASHINGTON MUTUAL BANK,

20 Plaintiff,

21 vs.

22 NJ LENDERS CORPORATION,

23 Defendant.

24 Case No.

25 **COMPLAINT FOR CONTRACTUAL
26 INDEMNITY**

INTRODUCTION

2 1. Pursuant to written agreements, defendant NJ Lenders Corporation
3 (“NJLC” or “Defendant”) brokered mortgage loans for Washington Mutual Bank
4 and/or its subsidiaries, including Long Beach Mortgage Company (collectively,
5 “WaMu”). As part of their agreements, NJLC promised to indemnify WaMu for
6 any losses arising either directly or indirectly, or in any way as a result of an
7 inaccurate or incomplete application or other documentation for loans brokered by
8 NJLC.

9 2. After WaMu funded the loans from NJLC, WaMu sold NJLC-brokered
10 loans into residential mortgage-backed securitized trusts (“RMBS Trusts”) for
11 which Deutsche Bank National Trust Company served as trustee (“Trustee”). The
12 Trustee ultimately asserted claims that it suffered losses because of defective loans
13 sold into the RMBS Trusts, including at least twenty-three (23) mortgage loans
14 brokered by NJLC (“NJLC Defective Loans”).

15 3. Plaintiff Federal Deposit Insurance Corporation as Receiver for WaMu
16 (“FDIC-R” or “Plaintiff”) incurred losses settling the Trustee’s claims. FDIC-R’s
17 losses resulted from inaccurate or incomplete loan applications or other
18 documentation prepared by or at the direction of NJLC including, *inter alia*, NJLC’s
19 submission of loan applications and supporting material that misrepresented such
20 things as the borrowers’ credit histories, employment status, income, or occupancy
21 status.

22 4. FDIC-R demanded that NJLC honor its written contractual
23 indemnification obligation. Because NJLC has not honored its obligations, FDIC-R
24 brings this action as successor to WaMu's rights, titles, powers, and privileges.

PARTIES, JURISDICTION, AND VENUE

26 5. The Federal Deposit Insurance Corporation is an instrumentality of the
27 United States and is organized and exists under the laws of the United States. 12
28 U.S.C. §§ 1811, 1821(d). Pursuant to 12 U.S.C. § 1821(d)(2), FDIC-R succeeded to

1 all rights, titles, powers, and privileges of WaMu and of any stockholder, member,
2 account holder, depositor, officer, or director of WaMu with respect to the bank and
3 its assets. FDIC-R brings this action in its capacity as the duly appointed receiver of
4 WaMu, which the Office of Thrift Supervision closed on September 25, 2008,
5 appointing FDIC as Receiver for WaMu that same day.

6 6. NJLC is a New Jersey corporation with its principal place of business
7 in Little Falls, New Jersey. NJLC is registered and licensed to do business in
8 California and transacts business from a branch office in Los Angeles, California.

9 7. This Court has subject-matter jurisdiction pursuant to 12 U.S.C.
10 § 1819(b)(1) and (2) and 28 U.S.C. §§ 1331 and 1345.

11 8. NJLC contractually agreed to venue in this district. *See* 2004 Mortgage
12 Broker Agreement, ¶ 21, attached hereto as Exhibit 1. Venue is also proper in this
13 district pursuant to 28 U.S.C. § 1391 because NJLC resides in this district in that it
14 transacts business from its branch office in Los Angeles, California. Additionally,
15 venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial
16 part of the events or omissions giving rise to this claim occurred in this judicial
17 district because, among other things, the contractual business relationship was
18 entered into by WaMu in this district and the place of performance for all or some of
19 the obligations sued upon was in this district.

20 **FACTUAL ALLEGATIONS**

21 9. WaMu was a federal savings bank that, directly or through affiliates
22 and/or subsidiaries, among other things, purchased, funded, and sold mortgage loans
23 to investment trusts that packaged loans into securities for investors, which are
24 generally known as residential mortgage-backed securities.

25 10. On information and belief, NJLC engaged in the business of brokering,
26 originating, processing, packaging, submitting for funding, selling and/or
27 transferring loans secured by real property.

1 **A. NJLC's Contractual Obligations**

2 11. NJLC and WaMu had a contractual business relationship, governed by
3 mortgage broker agreements, including the 2004 Mortgage Broker Agreement
4 ("2004 Agreement") and 2005 Mortgage Broker Agreement ("2005 Agreement")
5 (collectively, the "Agreements") attached hereto as Exhibits 1 and 2 respectively.

6 12. Under the Agreements, NJLC was responsible for, among other things,
7 interacting directly with and interviewing the borrower, counseling and assisting the
8 borrower in the financing process, collecting relevant information and
9 documentation in support of the loan application, preparing the loan application and
10 submission package, and submitting the completed loan package to WaMu. NJLC
11 agreed to only submit loan applications that met all applicable requirements
12 established by WaMu.

13 13. NJLC was compensated for any loans funded by WaMu.

14 14. Pursuant to the Agreements, NJLC expressly agreed to indemnify
15 WaMu as follows:

16 17 [NJLC] will indemnify, defend and hold [WaMu] ... harmless from any
18 and all costs, claims, charges, actions, causes of action, losses or
19 liability arising either directly or indirectly, regardless of any
20 indemnitee's negligence, by reason of [NJLC's] negligence, a breach of
21 the terms or conditions of this Agreement, or in any way as a result of
22 an inaccurate or incomplete application or other documentation
23 prepared by or at the direction of [NJLC]. (2004 Agreement).

24 25 [NJLC] agrees to indemnify, hold harmless, and defend [WaMu] . . .
26 from and against any and all losses, claims, demands, damages,
27 expenses or costs (including, but not limited to, reasonable attorneys'
28 fees and costs incurred by [WaMu], with or without suit) which in any
way arise out of or relate to an alleged act or omission of [NJLC] . . . in
connection with an Applicant, an Application Package, a Mortgage
Loan, or this Agreement. (2005 Agreement).

B. The NJLC Defective Loans

15. As noted above and set forth in more detail below, the Trustee asserted claims against FDIC-R based on WaMu's sale of defective loans into the RMBS Trusts, including the NJLC Defective Loans. As a result of the resolution of those claims, FDIC-R incurred losses in connection with the NJLC Defective Loans.

16. Pursuant to the Agreements, NJLC brokered the 23 NJLC Defective Loans summarized on Exhibit 3 attached hereto.

8 17. The NJLC Defective Loans failed to meet “all applicable requirements”
9 and “terms and conditions of [the] Agreement,” and contained inaccurate and
10 incomplete applications or other documentation, because of misrepresentations in
11 the application materials, including but not limited to misrepresentations relating to
12 the quality and characteristics of the loans, the borrowers, and the collateral.

13 18. As an example, the loan documents for borrower UC for two mortgage
14 loans in August 2005 contained numerous deficiencies, inaccuracies, and material
15 misrepresentations. NJLC prepared and submitted loan application documents for
16 UC that failed to disclose his ownership of, and \$435,000 of debt originated by
17 NJLC on, a property he purchased in July 2005.

18 19. As another example, NJLC prepared and submitted loan application
19 documents for CM that included a living expense payment history that was signed
20 by someone other than his landlord to hide that CM's relatives owned the residence.

C. WaMu's Sale of the NJLC Defective Loans to the RMBS Trusts

22 20. After WaMu funded the NJLC Defective Loans, WaMu sold each of
23 them to the RMBS Trusts.

21. In connection with such sales, and in reliance on the materials,
22 representations, obligations, and remedies NJLC provided, WaMu provided similar
23 representations, obligations, and remedies to the RMBS Trusts as those made by
24 NJLC regarding the quality and characteristics of the loans, the borrowers, and the
25 collateral.

1 22. The RMBS Trusts suffered losses resulting from defective loans that
2 WaMu sold to the RMBS Trusts, including the NJLC Defective Loans.

3 **D. FDIC-R's Settlement with Trustee**

4 23. On December 30, 2008, Trustee filed a proof of claim with FDIC-R
5 asserting that WaMu sold the RMBS Trusts defective loans. On August 26, 2009,
6 Trustee filed a lawsuit in the District Court for the District of Columbia against
7 FDIC-R for losses resulting from defective loans that WaMu sold to the RMBS
8 Trusts, including the NJLC Defective Loans.

9 24. FDIC-R was liable for the losses due to breaches of WaMu's
10 representations and obligations concerning the quality and characteristics of the
11 loans, the borrowers, and the collateral on certain loans sold into the RMBS Trusts,
12 which loans included the NJLC Defective Loans. Given NJLC's role and conduct in
13 connection with the NJLC Defective Loans, including NJLC's relationship to the
14 borrowers and that the loan information, documentation, and application packages
15 were prepared, gathered, and submitted by NJLC, FDIC-R's liability exposure to the
16 Trustee arose out of inaccurate or incomplete loan applications or other documents
17 prepared by or at the direction of NJLC.

18 25. FDIC-R defended itself against the claims in the Trustee's lawsuit and
19 eventually settled with the Trustee.

20 26. On June 30, 2017, the Superior Court of the State of California
21 approved Trustee's application to accept a settlement of its claims against FDIC-R
22 for FDIC-R's payment of more than \$3 billion, including claims arising out of or
23 relating to the NJLC Defective Loans. Settlement of the Trustee's claims for that
24 court-approved amount was objectively reasonable. On September 8, 2017, FDIC-R
25 issued a \$3,006,929,660 Receivership Certificate in settlement of Trustee's claims,
26 thereby suffering a loss under the Agreements' indemnification provisions.
27 FDIC-R's claims are timely because they are brought within six years of the date
28 FDIC-R suffered a loss. 12 U.S.C. § 1821(d)(14).

1 **E. NJLC's Breach of the Indemnification Obligations**

2 27. On August 13, 2021, FDIC-R sent a demand letter to NJLC seeking
3 indemnification for its losses arising out of NJLC's acts and omissions in connection
4 with the NJLC Defective Loans. NJLC has not honored its obligation to indemnify
5 under the Agreements.

6 28. The Agreements provide that the prevailing party in any action to
7 enforce it may recover its reasonable attorneys' fees. In order to enforce NJLC's
8 obligations under the Agreements, FDIC-R has retained the firm of Mortgage
9 Recovery Law Group, LLP and agreed to pay it reasonable attorneys' fees. In
10 addition, FDIC-R has assigned in-house counsel to assist in actively preparing to
11 bring this case to trial.

12 29. All conditions precedent to the relief sought in this action have been
13 fulfilled.

14 **CLAIM FOR RELIEF**

15 **(Contractual Indemnification)**

16 30. Plaintiff FDIC-R incorporates by reference the allegations set forth
17 above as though set forth fully herein.

18 31. The Agreements are valid and enforceable contracts.

19 32. Plaintiff substantially performed all its obligations under the
20 Agreements.

21 33. In connection with settlement of the claims involving the NJLC
22 Defective Loans, FDIC-R incurred substantial losses and damages arising directly or
23 indirectly in any way as a result of an inaccurate or incomplete applications or other
24 documentation prepared by or at the direction of NJLC, or relating to an alleged act
25 or omission of NJLC in connection with a loan applicant, loan application package,
26 mortgage loan, or the 2005 Agreement.

27 34. FDIC-R is entitled to indemnification from NJLC for the losses
28 FDIC-R suffered settling the Trustee's claims.

1 35. NJLC breached its obligations to indemnify FDIC-R, resulting in
2 damage to FDIC-R in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FDIC-R respectfully requests that it be granted:

5 A. A judgment against NJLC in an amount to be proven at trial for its breach
6 of its indemnification obligations;

7 B. Pre-judgment interest under 12 U.S.C. § 1821(l) or applicable state law;

8 C. Reasonable attorneys' fees;

9 D. Costs and expenses; and

10 E. Any other relief as the Court deems just and proper.

12 DATED: February 27, 2023 MORTGAGE RECOVERY LAW GROUP, LLP

By: /s/ Paul A. Levin

Paul A. Levin

Attorneys for Plaintiff Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank

19 DATED: February 27, 2023 FEDERAL DEPOSIT INSURANCE CORPORATION

By: /s/ Douglas T. Hoffman

Douglas T. Hoffman (to seek admission to pro hac vice)
Attorneys for Plaintiff Federal Deposit Insurance
Corporation as Receiver for Washington Mutual Bank